

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA

Plaintiffs,

vs.

LEON BENZER, *et al.*

Defendants.

Case No. 2:13-cr-00018-JCM-GWF

**ORDER**

Motion for Leave to File Surreply  
(118)

This matter comes before the Court on Plaintiff United States of America's ("Plaintiff") Motion for Leave to File Surreply (#118), filed on May 28, 2013. Defendant Edith Gillespie ("Defendant") filed a Motion to Sever (#104) on May 1, 2013. Plaintiff filed a Response (#109) to the Motion to Sever (#104) on May 14, 2013. Defendant filed a Reply (#111) on May 20, 2013. Plaintiff now moves to file a surreply to Defendant's Reply (#111), alleging Defendant raised new arguments therein. Specifically, Defendant attached an Affidavit (#111-1) to her Reply (#111) that purportedly supports an argument for severance under *United States v. Virgil*<sup>1</sup> that Defendant made in her original Motion (#104).

"A surreply may only be filed by leave of court, and only to address new matters raised in a reply to which a party would otherwise be unable to respond." *Kanvick v. City of Reno*, No. 3:06-cv-00058-RAM, 2008 U.S. Dist. LEXIS 24719, at \*1 n.1 (D. Nev. Mar. 27, 2008). Because Defendant attached the Affidavit to her Reply and not to her original Motion (#104), Plaintiff was unable to address the Affidavit's sufficiency under *Virgil*. Furthermore, the Proposed Surreply (#118-1) addresses only the sufficiency of the Affidavit. Accordingly,

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<sup>1</sup>561 F.2d 1316 (9th Cir. 1977)

1           **IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File Surreply (#118) is  
2 **granted.**

3           **IT IS FURTHER ORDERED** that the Clerk of the Court shall file Plaintiff's Proposed  
4 Surreply (#118-1).

5           DATED this 30th day of May, 2013.

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8 GEORGE FOLEY JR.  
9 United States Magistrate Judge  
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